

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

RIVIERA ON THE SEA OF CORTEZ, LLC

Plaintiff,

vs

LUIS MANUEL CHAVEZ, a/k/a LOUIS
MANUEL CHAVEZ; and DOES I through X,
inclusive,

Defendants.

Case No.: 2:16-cv-01060-APG-PAL

**ORDER GRANTING MOTION FOR
DEFAULT JUDGMENT**

(ECF No. 13)

Plaintiff Riviera on the Sea of Cortez, LLC (“Riviera”) filed its Complaint against defendant Luis Manual Chavez on May 11, 2016. ECF No. 1. The Summons and Complaint were served upon Chavez on May 26, 2016. ECF No. 9. Chavez did not file an answer or other response to the Complaint and has not appeared in this case. His default was entered on August 1, 2016. ECF No. 12. Riviera now moves for Default Judgment. ECF No. 13. The motion for Default Judgment demonstrates good cause for entry of judgment against Chavez.

I. LEGAL STANDARD

Obtaining a default judgment under Federal Rule of Civil Procedure 55 is a two-step process. *See Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). First, “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Fed. R. Civ. P. 55(a). Then, after the clerk enters default, a party must seek entry of default judgment under Rule 55(b).

Upon entry of default, I take as true the factual allegations in the non-defaulting party’s complaint, except those related to the amount of damages. Fed. R. Civ. P. 8(b)(6); *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987) (quotation omitted).

1 Nonetheless, “[e]ntry of default does not entitle the non-defaulting party to a default judgment
2 as a matter of right.” *Warner Bros. Entm’t Inc. v. Caridi*, 346 F. Supp. 2d 1068, 1071 (C.D.
3 Cal. 2004) (citation omitted). The “general rule [is] that default judgments are ordinarily
4 disfavored. Cases should be decided upon their merits whenever reasonably possible.” *Eitel*,
5 782 F.2d at 1472 (citing *Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir.
6 1985)). Granting a default judgment is within the district court’s discretion. *Id.*

7 I consider the following factors in determining whether to grant a default judgment:
8 (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff’s substantive
9 claims; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5)
10 the possibility of a dispute concerning material facts; (6) whether the default was due to
11 excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure
12 favoring decisions on the merits. *Id.* at 1471–72.

13 II. ANALYSIS

14 Riviera has satisfied the procedural requirements for default judgment. Pursuant to
15 Rule 55(a), the clerk properly entered a default against Chavez. Because Chavez has neither
16 answered nor otherwise responded to the complaint, the notice requirement of Rule 55(b)(2)
17 is not implicated. Thus, there is no procedural impediment to entering a default judgment.

18 Turning next to the *Eitel* factors, the first factor considers whether Riviera will suffer
19 prejudice if a default judgment is not entered. See *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F.
20 Supp. 2d 1172, 1177 (C.D. Cal. 2002); *Next Gaming, LLC v. Glob. Gaming Grp., Inc.*, No.
21 2:14-CV-00071-MMD-CWH, 2016 WL 3750651, at *3 (D. Nev. July 13, 2016). In this case,
22 the clerk entered default against Chavez for his failure to file a responsive pleading or answer
23 the complaint and defend the lawsuit. Riviera will suffer prejudice if default judgment is not
24 entered as it will have no other means to litigate its claims. See *PepsiCo, Inc.*, 238 F. Supp. 2d
25 at 1177 (“Potential prejudice to Plaintiffs favors granting a default judgment. If Plaintiffs’
26 motion for default judgment is not granted, Plaintiffs will likely be without other recourse for
27 recovery.”). Thus, this factor weighs in favor of an entry of default judgment.
28

1 The second and third *Eitel* factors favor a default judgment when the “plaintiff state[s]
2 a claim on which the plaintiff may recover.” *Danning v. Lavine*, 572 F.2d 1386, 1389 (9th
3 Cir. 1978); see also Fed. R. Civ. P. 8. Riviera’s complaint is well pleaded in that it adequately
4 states a breach of the terms of the contract between the parties. A “plaintiff in a breach of
5 contract claim must show (1) the existence of a valid contract, (2) a breach by the defendant,
6 and (3) damage as a result of the breach.” *Saini v. Int’l Game Tech.*, 434 F. Supp. 2d 913,
7 919-20 (D. Nev. 2006). Riviera has adequately demonstrated each of these elements.
8 Therefore, the second and third *Eitel* factors weigh in favor of entry of default judgment.

9 In assessing the fourth *Eitel* factor, I consider “the amount of money requested in
10 relation to the seriousness of the defendant’s conduct, whether large sums of money are
11 involved, and whether ‘the recovery sought is proportional to the harm caused by [the]
12 defendant’s conduct.’” *Curtis v. Illumination Arts, Inc.*, 33 F. Supp. 3d 1200, 1212 (W.D.
13 Wash. 2014) (quoting *Landstar Ranger, Inc. v. Parth Enters., Inc.*, 725 F. Supp. 2d 916, 921
14 (N.D. Cal. 2010)); *PepsiCo., Inc.*, 238 F. Supp. 2d at 1176. Riviera seeks \$9,056,000, the
15 value of the property covered by the subject contract. Riviera supports that request with an
16 appraisal. Riviera’s damages appear to be reasonable and proportionate to the harm suffered,
17 and therefore the fourth *Eitel* factor weighs in favor of default judgment.

18 The fifth *Eitel* factor weighs the possibility of a dispute regarding any material facts in
19 the case. *PepsiCo., Inc.*, 238 F. Supp. 2d at 1177. “Upon entry of default, all well-pleaded
20 facts in the complaint are taken as true, except those relating to damages.” *Id.* (citation
21 omitted). There is little possibility of a dispute concerning material facts given both the well-
22 pleaded complaint and the evidence Riviera presented to support its allegations. *See Landstar*
23 *Ranger, Inc. v. Parth Enter., Inc.*, 725 F. Supp. 2d 916, 921-22 (N.D. Cal. 2010) (“Since
24 [plaintiff] has supported its claims with ample evidence, and defendant has made no attempt
25 to challenge the accuracy of the allegations in the complaint, no factual disputes exist that
26 preclude the entry of default judgment.”). Additionally, given Chavez’s failure to answer, no
27 dispute has been raised regarding material elements in the complaint. Thus, the fifth *Eitel*
28

1 factor weighs in favor of an entry of default judgment.

2 The sixth *Eitel* factor considers whether the defendant's default is due to excusable
3 neglect. *PepsiCo., Inc.*, 238 F. Supp. 2d at 1177. In the instant case, Riviera properly served
4 Chavez with the summons and the complaint but Chavez failed to respond. Subsequently, the
5 Clerk of Court entered default over two months later. There is no evidence before me that
6 Chavez's failure to respond is due to excusable neglect. *United States v. High Country Broad.*
7 *Co.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (per curiam) (holding that it was "perfectly
8 appropriate" for the district court to enter default judgment against a corporation that failed to
9 appear in the action). Given the time period during which Chavez had notice of the action
10 against it and in which it failed to answer or otherwise respond to the complaint, it is unlikely
11 that it failed to respond due to excusable neglect. *See Produce All., LLC v. Lombardo Imports,*
12 *Inc.*, No. 2:12-CV-00433-MMD-CWH, 2013 WL 129428, at *4 (D. Nev. Jan. 9, 2013)
13 (concluding that defendants' failure to respond was likely not from excusable neglect where
14 defendants received service nearly two months before the clerk's entry of default). Thus, the
15 sixth *Eitel* factor weighs in favor of an entry of default judgment.

16 Finally, the seventh *Eitel* factor takes into account the policy favoring a decision on
17 the merits. "Cases should be decided on their merits whenever reasonably possible." *Eitel*,
18 782 F.2d at 1472. However, Chavez's failure to respond to the complaint "makes a decision
19 on the merits impractical, if not impossible." *PepsiCo., Inc.*, 238 F. Supp. 2d at 1177. Thus,
20 while this final *Eitel* factor always weighs against an entry of default judgment, it does not
21 preclude me from entering a default judgment. While a decision on the merits is desirable,
22 Chavez has abandoned its defense, failed to file a responsive pleading or answer the
23 complaint, and failed to defend the lawsuit. Under these circumstances, default judgment in
24 favor Riviera and against Chavez is warranted.

25 Riviera also seeks \$10,000 in attorney's fees incurred in relation to this litigation.
26 Riviera offers no legal, contractual, or other basis to support its request for attorney's fees.
27 Nor does Riviera offer any evidence to support the amount of its request. The request does not
28

1 comply with Local Rule 54-14 and will be denied without prejudice.

2 Riviera also seeks \$528.00.66 in costs for filing fees and process server fees. Filing
3 fees and service of process expenses are taxable costs. See 28 U.S.C. § 1920(1). To request
4 taxable costs, the prevailing party must file a bill of costs with the clerk. LR 54-1. Taxable
5 costs are taxed by the clerk rather than the Court. Fed. R. Civ. P. 54(d)(1); LR 54-1.
6 Therefore, Riviera's request for an award of costs is denied without prejudice.

7 **III. CONCLUSION**

8 IT IS THEREFORE ORDERED that the motion for default judgment (**ECF No. 13**) is
9 **GRANTED**. The clerk of the court is directed enter judgment in favor of plaintiff RIVIERA
10 ON THE SEA OF CORTEZ, LLC and against defendant LUIS MANUEL CHAVEZ, a/k/a
11 LOUIS MANUEL CHAVEZ, in the amount of \$9,056,000.00. The judgment shall bear
12 interest as provided by law until it is fully paid.

13 DATED this 2nd day September, 2016.

14
15 
16 _____
17 HONORABLE ANDREW P. GORDON
18 UNITED STATES DISTRICT JUDGE
19
20
21
22
23
24
25
26
27
28